

No. 83-363

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**IN THE
SUPREME COURT OF THE UNITED STATES**

October Term, 1983

THE STATE OF CONNECTICUT,
Petitioner,
v.
CHARLES F. UBALDI,
Respondent.

**On Writ of Certiorari to the
Supreme Court of the State of Connecticut**

PETITIONER'S REPLY BRIEF

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PETITIONER'S REPLY BRIEF

The petitioner submits this Reply Brief under Rule 22.5.

THE PETITION FOR CERTIORARI IS PROPERLY BEFORE THIS COURT.

The respondent argues that this Court is without power to review the decision of the Connecticut Supreme Court by a writ of certiorari. His brief is devoted exclusively to this argument, and he makes no attempt to defend the correctness of the Connecticut Supreme Court's decision in the light of Smith v. Phillips, 455 U.S. 209 (1982), and United States v. Hasting, - U.S. - , 103 S.Ct. 1974, 76 L.Ed.2d 96 (1983). It is submitted that this in itself reveals the need for this Court to correct the obvious error of the Connecticut Supreme Court which resulted in an injustice to

the people of Connecticut and needlessly endangers the public safety.

I.

The respondent's first argument, concerning Michigan v. Long, - U.S. - , 103 S.Ct. 3469, 77 L.Ed.2d 1201 (1983), is based upon a misreading of the Connecticut Supreme Court decision. That decision contained an extensive discussion of the two decisions of this Court which established the requirement of harmful error before a conviction should be overturned. Those two decisions, Smith v. Phillips and United States v. Hasting, were not simply cited with other such cases from other jurisdictions, but were cited at length and in a manner central to the Connecticut court's decision.

II.

The respondent's second argument is based upon the failure of the petitioner to anticipate the Connecticut Supreme Court's refusal to apply the correct harmless error rule, as requested by the petitioner, when reacting to what that court perceived to be deliberate prosecutorial misconduct. The respondent argues that the petitioner should have had the foresight to make the argument before the Connecticut court that the needless punishment of society endangers that society constitutionally entitled to domestic tranquility. As the Connecticut Supreme Court itself, however, later explained, its Ubaldi decision broke new ground. See State v. Falcone, 191 Conn. 12, 22 n.12, 463 A.2d 558, 563 n.12 (1983).

The petitioner's argument in this Court that this needless punishment of

society endangers that society constitutionally entitled to domestic tranquility does not offend any of the policies against granting certiorari found in Webb v. Webb, 451 U.S. 493 (1981), or explained in detail in Illinois v. Gates, - U.S. - , 103 S.Ct. 2317, 76 L.Ed.2d 527 (1983). The record is entirely adequate to consider the petitioner's argument, and the argument itself is uniquely suited for entertainment by this Court since it seeks to directly apply the federal Constitution's guarantee of an effective criminal justice system not to the actions of other state officials but to the actions of the Connecticut Supreme Court.

There is an urgent need for this Court to apply the federal Constitution's guarantee of effective law enforcement to correct the obvious error of the

Connecticut Supreme Court and to insure domestic tranquility. As Justice Powell explained in Webb v. Webb, 451 U.S. at 502 (concurring opinion), where there is plain error unchallenged in the state court and a need to prevent fundamental unfairness, this Court has jurisdiction to review the state court decision. The petitioner submits the people's right to effective law enforcement constitutes such a fundamental right that this Court should review the Connecticut Supreme Court decision.

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